

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.04.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No.537 of 1995

1. The Tamil Nadu Electricity Board,
Rep.by its Superintending Engineer,
Coimbatore Electricity System,
Coimbatore 641 012.
 2. Assistant Divisional Engineer,
Distribution-P.D.R.,
Coimbatore Electricity System / South,
Podanur, Coimbatore.
 3. Assistant Divisional Engineer,
Anti-Power Theft Squad,
Tamil Nadu Electricity Board,
Coimbatore 641 012.
- Appellants/Defendants/
Appellants
- Vs.
- R.Raja
- Respondent/Plaintiff/
Respondent

PRAYER: Second Appeal against the Judgment and decree dated 15.11.1994 made in A.S.No.45 of 1994 by the learned District Judge, Coimbatore, confirming the judgement and decree dated 24.06.1992 made in O.S.No.818 of 1987 by the learned III Additional District Munsiff, Coimbatore.

For Petitioner : Mr.N.Muthusamy (TNEB)
For Respondents : Mr.K.Goviganesan

J U D G M E N T

The unsuccessful defendants, Tamil Nadu Electricity Board in both the Courts below are the appellants. The plaintiffs filed the suit for a declaration that the order of the second defendant, namely, the Assistant Divisional Engineer Distribution, P.D.R. Coimbatore Electricity System, Coimbatore-23 dated 16.04.1987

marked as Ex.A.1 is opposed to law and rules governing the Electricity Board and the terms and conditions of supply and for an injunction against the defendant Board from disconnecting the electricity supply.

2. The plaintiff's case was that he is the owner of the electricity connection No.1182 SIDCO having obtained on 29.01.1986 with permission to use 125 H.P. and he has been using various machines within the power limit and in fact the third defendant has tested the same on 26.03.1987 and the horsepower used by the plaintiff was found to be 123.5 H.P. While so by the letter, dated 16.04.1987 the second defendant has alleged that the plaintiff has used excess H.P. and directing to stop the same failing which the electricity connection will be disconnected. The challenge against the Ex.A.1 order is made on the basis that the same has been arrived at without enquiry and without opportunity and it is against the Indian Electricity Act, Section 24(4) and the plaintiff's signature was obtained by compulsion.

3. The defendants have raised the defense that as per the Indian Electricity Act, 1910 Schedule 4(3), using of the excess horsepower is misconduct. Simply because the defendants used to check up the electricity connection periodically it does not mean that the defendants have accepted that the plaintiffs are using the power within the limit. It is the defendant's case that by conduct of the plaintiff the defendants board has incurred a loss of Rs.1,16,060/-.

4. The Trial Court on appreciation of evidence and also referring to the various clauses of terms and conditions of supply marked as Ex.B.3 has found that before arriving at such a conclusion as a final assessment no opportunity as required under the conditions was given and in view of the same decreed the suit. It was as against the judgement and decree of the Trial Court the defendant Board has filed the appeal and the Appellate Court has also dismissed the appeal on merits. It is as against the said concurrent finding of both the Courts below the present Second Appeal is filed. While admitting the Second Appeal this Court has framed the following substantial question of law:

"Whether the suit is maintainable in law"

5. At the outset it is relevant to point out that it is not even the case of the defendant in the written statement that the suit is not maintainable. On the other hand, the written statement proceeds to justify the order of final assessment passed under Ex.A.1 dated 16.04.1987 stating that the same is not only in accordance with Electricity Act, but also various terms and conditions and also stating that the inspection has been effected

and found that the plaintiff has been using more than the specified units of horsepower to which he was permitted. Both the Courts below on appreciation of evidence have found that as per Ex.B.3 terms and conditions which are binding on both the plaintiff and the defendants, it is clear that even in cases of malpractice, as per condition No.9 and 10 an initial assessment has to be passed based on inspection report and thereafter the consumer must be directed to pay 50% of the assessed amount and thereafter show-cause notice to be issued to the consumer by giving 30 days time and after conducting enquiry by giving opportunity to the consumer the final assessment order has to be passed.

6. In the present case as correctly found by both the Courts below when it is the case of the defendants that in fact they have conducted inspection, both the Courts below especially the Trial Court has specifically found that the defendants have not even produced the inspection report before the court and on that basis has correctly come to the conclusion that the inspection was done properly. Both the Courts below have also found that the consumer, namely, the plaintiff has not even been informed about the inspection report and therefore, it is in violation of the principles of natural justice and there was no opportunity given to the plaintiff to defend his case. In fact the learned First Appellate Judge has relied upon the judgement of the Hon'ble Supreme Court rendered in Municipal Corporation of Delhi Vs. M/s.Ajanta Iron and Steel Company Pvt. Ltd., reported in AIR 1990 SC 382 holding that the Electricity Board is performing a public duty governed by the special statutes and it requires the following of the principles of natural justice. Applying the doctrine laid down by the Hon'ble Apex Court and the Courts below having correctly come to the conclusion that even inspection report has not been filed before the Court, there is absolutely nothing warranting interference.

7. The Courts below have correctly come to the conclusion that the defendants who have the responsibility of proving that inspection was conducted in accordance with law and in conformity with the principles of natural justice, have not done so and in view of the same Ex.A.1 order is illegal and unsustainable in law.

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8. In view of the above said position, there is absolutely no substantial question of law involved in this case. The Second Appeal fails and the same is dismissed without cost.

Sd/
Asst.Registrar

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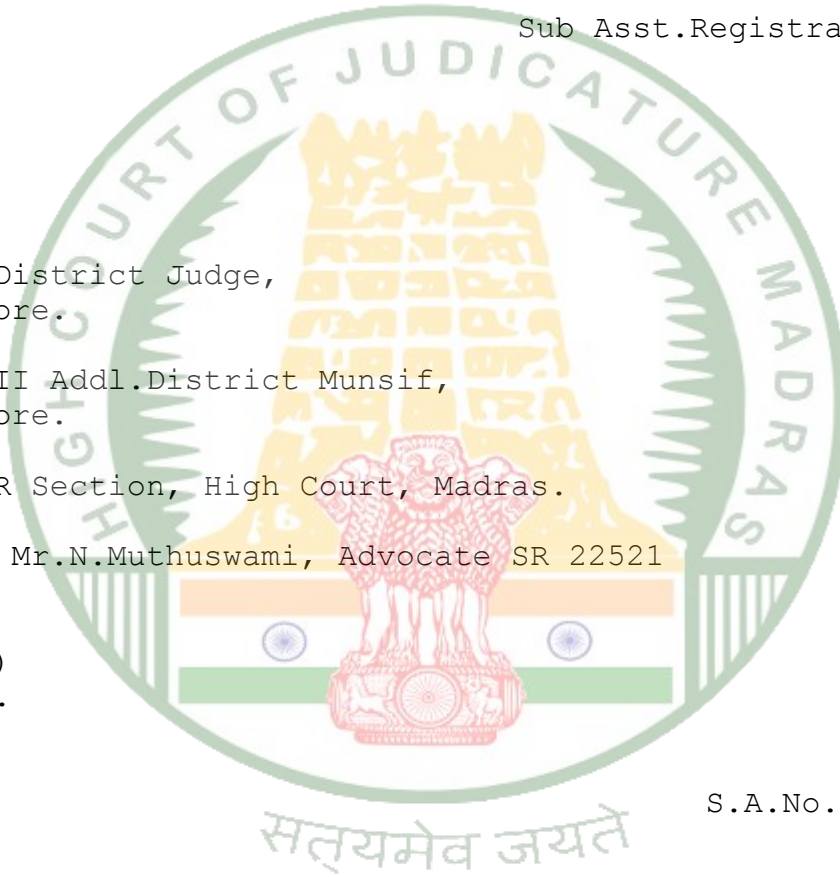
Sub Asst.Registrar

nbj

To

1. The District Judge,
Coimbatore.
 - 2.The III Addl.District Munsif,
Coimbatore.
 - 3.The VR Section, High Court, Madras.
- +1cc to Mr.N.Muthuswami, Advocate SR 22521

SSV (CO)
km/18.4.



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